

DEFAULT DECISIONS**ANIMAL QUARANTINE AND RELATED LAWS**

In re: BILLY C. ROBINSON, d/b/a B & R FARMS.

A.Q. Docket No. 97-0011.

Decision and Order filed December 30, 1997.

Failure to file an answer - Transport of cattle interstate without required certificates - Civil penalty.

Rick Herndon, for Complainant.

Respondent, Pro se.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the interstate transportation of cattle in the United States (9 C.F.R. § 78.1 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 9 C.F.R. § 70.1 *et seq.* and 7 C.F.R. § 1.130 *et seq.*

This proceeding was instituted under section 2 of the Act of February 2, 1903, as amended (21 U.S.C. § 111)(Act) and the regulations promulgated thereunder, by a complaint filed on June 11, 1997, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision and Order as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Billy C. Robinson is an individual doing business as B & R Farms whose mailing address is P. O. Box 106, Ranburne, Alabama 36273.
2. Between June 5 and October 2, 1996, the respondent transported twenty-nine (29) cows from Alabama to livestock markets in Georgia without certificates as required by section 78.9 (b) (3) of the regulations (9 C.F.R. § 78.9(b)(3)). The

respondent transported the subject cows as follows:

- a) June 5: Two cows from Centre Livestock Market, Centre, Alabama, to Carroll County Livestock Sales Barn, Carrollton, Georgia.
- b) June 28: One cow from Centre Livestock Market, Centre, Alabama, to Coosa Valley Livestock Market, Rome, Georgia.
- c) July 10: Two cows from Centre Livestock Market, Centre, Alabama, to Carroll County Livestock Sales Barn, Carrollton, Georgia.
- d) July 17: One cow from Centre Livestock Market, Centre, Alabama, to Carroll County Livestock Sales Barn, Carrollton, Georgia.
- e) July 19: Two cows from Centre Livestock Market, Centre, Alabama, to Coosa Valley Livestock Market, Rome, Georgia.
- f) July 24: Four cows from Centre Livestock Market, Centre, Alabama, to Carroll County Livestock Sales Barn, Carrollton, Georgia.
- g) August 7: Two cows from Centre Livestock Market, Centre, Alabama, to Carroll County Livestock Sales Barn, Carrollton, Georgia.
- h) August 30: One cow from Centre Livestock Market, Centre, Alabama, to Coosa Valley Livestock Market, Rome, Georgia.
- i) September 11: Two cows from Centre Livestock Market, Centre, Alabama, to Carroll County Livestock Sales Barn, Carrollton, Georgia.
- j) September 13: One cow from Centre Livestock Market, Centre, Alabama, to Coosa Valley Livestock Market, Rome, Georgia.
- k) September 18: Five cows from Centre Livestock Market, Centre, Alabama, Carroll County Livestock Sales Barn, Carrollton, Georgia.
- l) September 25: Three cows from Centre Livestock Market, Centre, Alabama, to Carroll County Livestock Sales Barn,

Carrollton, Georgia.

- m) October 2: Three cows from Centre Livestock Market, Centre, Alabama, and one cow from South Alabama Livestock, Brundidge, Alabama, to Carroll County Livestock Sales Barn, Carrollton, Georgia.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Acts and the regulations issued under the Acts (9 C.F.R. § 78.1 *et seq.*). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of six thousand five hundred dollars (\$6,500.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to A.Q. Docket No. 97-0011.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final March 12, 1998.-Editor]

In re: VAN SIEU LA.
A.Q. Docket No. 97-0007.
Decision and Order filed February 19, 1998.

Failure to file an answer - Importation of cured meats derived from ruminants from Vietnam without a certificate - Civil penalty.

James Holt, for Complainant.
Respondent, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the Act of February 2, 1903, as amended (21 U.S.C. § 111), and regulations promulgated thereunder (9 C.F.R. § 94.4).

This proceeding was instituted by a complaint filed against Van Sieu La, respondent, on March 25, 1997, by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture. Respondent has not filed an answer to date. Pursuant to section 1.136(c) of the rules of practice (7 C.F.R. § 1.136(c)), failure to deny or otherwise respond to the allegations in the complaint constitutes, for the purposes of this proceeding, an admission of said allegations. By respondent's failure to answer, respondent has admitted the allegations of the complaint.

Accordingly, the material allegations alleged in the Complaint are adopted and set forth herein as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the rules of practice applicable to this proceeding. (7 C.F.R. § 1.139).

Finding of Fact

1. Van Sieu La is an individual with a mailing address of 3363 So. 100 E Street, #146, Salt Lake City, Utah 84106.
2. On June 1, 1996, at Los Angeles, California, respondent imported cured meat derived from ruminants into the United States from Vietnam without a certificate.

Conclusion

By reason of the facts contained in the Findings of Fact above, Van Sieu La, respondent, has violated 9 C.F.R. § 94.4. Therefore, the following Order is issued.

Order

Van Sieu La, respondent, is hereby assessed a civil penalty of five hundred dollars (\$500.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded to the United States Department of Agriculture, APHIS Field Servicing Office, Accounting Section, Butler Square West, 5th Floor, 100 North Sixth Street, Minneapolis, Minnesota 55403, within thirty (30) days from the effective date of this Order. The certified check or money order should include the docket number of this proceeding.

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the rules of practice applicable to this proceeding (7 C.F.R. § 1.145).

[This Decision and Order became final May 4, 1998.-Editor]

In re: CARLOS E. AMIERO.

A.Q. Docket No. 97-0012.

Decision and Order filed March 3, 1998.

Failure to file an answer - Importation of parrots without offering them at a designated port of entry - Civil penalty.

Darlene M. Bolinger, for Complainant.

Respondent, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the importation of seven (7) amazon pet parrots (9 C.F.R. § 101 (c)(3), 9 C.F.R. § 92.102 (a) or § 92.105(b)), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. § 1.130 *et seq.*

This proceeding was instituted under section 2 of the Act of February 2, 1903, as amended (21 U.S.C. § 111)(Act) and the regulations promulgated thereunder, by a complaint filed on June 11, 1997, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c))

provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file an answer constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision and Order as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Carlos E. Amiero is an individual whose mailing address is Calle 7-E-22, Repto Marquez, Recibo, Puerto Rico 00612.
2. On or about March 12, 1996, respondent imported seven (7) amazon pet parrots, in violation of § 92.101(c)(3) of the regulations (9 C.F.R. § 92.101(c)(3)), in that the bird was not offered for entry at one of the ports of entry designated in 9 C.F.R. § 92.102(a) or § 92.105(b) of the regulations.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Act and the regulations issued under the Act (9 C.F.R. § 92.101 - § 92.106). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of one thousand dollars (\$1,000.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to A.Q. Docket No. 97-0012.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final May 22, 1998.-Editor]

ANIMAL WELFARE ACT

In re: LAURA CARPENTER.

AWA Docket No. 96-0087.

Decision and Order filed October 14, 1997.

Failure to file an answer - Veterinary care - Primary enclosures - Removal of waste - Cease and desist order
- Civil penalty - Suspension.

Donald Tracy, for Complainant.

Respondent., Pro se

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a Complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent wilfully violated the Act and the regulations issued thereunder (9 C.F.R. § 1.1 *et seq.*).

Copies of the Complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served upon respondent by personal service on February 6, 1997. Respondent was informed in the letter of service that an Answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent failed to file an Answer addressing the allegations contained in the complaint within the time prescribed in the Rules of Practice. Therefore, the material facts alleged in the Complaint, which are admitted by respondent's failure to file an Answer pursuant to the Rules of Practice, are adopted and set forth herein as Findings of Fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact

1. (a) Laura Carpenter, hereinafter referred to as respondent, is an individual whose address is 5003 County Road 486, Tebbets, Missouri 65080.

(b) The respondent, at all times material herein, was licensed and operating as a dealer as defined in the Act and the regulations.

(c) When the respondent became licensed and annually thereafter, she

received copies of the Act and the regulations and standards issued thereunder and agreed in writing to comply with them.

2. (a) On February 29, 1996, APHIS inspected respondent's premises and found that respondent had failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

(b) On February 29, 1996, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Primary enclosures for dogs were not structurally sound and maintained in good repair (9 C.F.R. § 3.6(a)(1)); and

2. Excreta and food waste were not removed from primary enclosures daily, to prevent soiling of the dogs and to reduce disease hazards, insects, pests and odors (9 C.F.R. § 3.11(a)).

3. (a) On April 1, 1996, APHIS inspected respondent's premises and found that respondent had failed to maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine and failed to provide veterinary care to animals in need of care, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

(b) On April 1, 1996, APHIS inspected the respondent's facility and found the following willful violations of section 2.100(a) of the regulations (9 C.F.R. § 2.100(a)) and the standards specified below:

1. Excreta and food waste were not removed from primary enclosures daily, to prevent soiling of the dogs and to reduce disease hazards, insects, pests and odors (9 C.F.R. § 3.11(a)); and

2. Primary enclosures for dogs were not structurally sound and maintained in good repair (9 C.F.R. § 3.6(a)(1)).

Conclusions

1. The Secretary has jurisdiction in this matter.

2. By reason of the facts set forth in the Findings of Fact above, the respondent has violated the Act, as well as standards and regulations promulgated under the Act.

3. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent, her agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from:

(a) Failing to construct and maintain housing facilities for animals so that they are structurally sound and in good repair in order to protect the animals from injury, contain them securely, and restrict other animals from entering;

(b) Failing to establish and maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine; and

(c) Failing to maintain primary enclosures for animals in a clean and sanitary condition.

2. The respondent is assessed a civil penalty of \$7,500.00, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

3. Respondent's license is suspended for a period of 30 days and continuing thereafter until she demonstrates to the Animal and Plant Health Inspection Service that she is in full compliance with the Act, the regulations and standards issued thereunder, and this order, including payment of the civil penalty imposed herein. When respondent demonstrates to the Animal and Plant Health Inspection Service that she has satisfied this condition, a supplemental order will be issued in this proceeding upon the motion of the Animal and Plant Health Inspection Service, terminating the suspension.

The provisions of this Order shall become effective on the first day after service of this decision on the respondents. Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties

[This Decision and Order became final December 31, 1997.-Editor]

In re: DAVID TWOMEY and JUDI TWOMEY.
AWA Docket No. 96-0079.
Decision and Order filed November 18, 1997.

Failure to file an answer - Operating as an exhibitor without being licensed - Records - Veterinary care - Exercise space - Waste removal - Cease and Desist order - Civil penalty - Suspension.

Donald Tracy, for Complainant.

Respondents, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a Complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondents wilfully violated the Act and the regulations issued thereunder (9 C.F.R. § 1.1 *et seq.*).

Copies of the Complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served upon respondents by personal service on February 20, 1997. Respondents were informed in the letter of service that an Answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondents failed to file an Answer addressing the allegations contained in the complaint within the time prescribed in the Rules of Practice. Therefore, the material facts alleged in the Complaint, which are admitted by respondents' failure to file an Answer pursuant to the Rules of Practice, are adopted and set forth herein as Findings of Fact.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact

1. A. David Twomey and Judy Twomey, hereinafter referred to as the respondents, are individuals doing business as Happytime Circus and whose mailing address is Post Office Box 269, Windsor, California 95492.

B. The respondents, at all times material herein, were operating as exhibitors as defined in the Act and the regulations.

C. When the respondents became licensed and at each renewal date, they received copies of the Act and regulations and agreed, in writing, to comply with them.

2. On at least six occasions between May 9 and June 14, 1992 the respondents operated as exhibitors without being licensed as required, in willful violation of section 4 of the Act ((7 U.S.C. § 2134), section 2.1 of the regulations (9 C.F.R. § 2.1), and the Order issued in AWA Docket No. 89-6 on August 9, 1991.

3. The respondents operate a traveling exhibition. On September 15, 1993,

February 8, 1994, and October 21, 1994, APHIS inspectors requested their itineraries, so that their operations could be inspected. The respondents have repeatedly failed and refused to provide the required information, in willful violation of section 2.125 of the regulations (9 C.F.R. § 2.125).

4. On September 15, 1993, February 8, 1994, and October 21, 1994, APHIS inspected the respondents' operations and found that:

A. The respondents had failed to maintain complete records showing the acquisition and disposition of dogs, in willful violation of section 10 of the Act (7 U.S.C. § 2140) and section 2.75(a)(1) of the regulations (9 C.F.R. § 2.75(a)(1)).

B. The respondents had failed to establish a written program of veterinary care with regularly scheduled visits of an attending or consulting veterinarian, in willful violation of section 2.40 of the regulations (9 C.F.R. § 2.40).

C. The respondents had failed to develop, document, and follow an appropriate plan to provide dogs with the opportunity for exercise, and to provide such plan to APHIS upon request, in willful violation of section 2.100 of the regulations and section 3.8 of the standards (9 C.F.R. §§ 2.100, 3.8).

5. On February 8, 1994, and October 21, 1994, APHIS inspected the respondents' operations and found that the respondents had failed to provide dogs with adequate space in primary enclosures and, for dogs on tethers, had failed to provide tethers of sufficient length, in willful violation of section 2.100 of the regulations and sections 3.6(a)(xi) and 3.6(c)(2) of the standards (9 C.F.R. §§ 2.100, 3.6(a)(xi), 3.6(c)(2)).

6. On March 15, 1996, APHIS inspected the respondents' operations and found that:

A. The respondents had failed to maintain records concerning veterinary care, and exercise and socialization for dogs in violation of sections 2.40 and 3.8 of the regulations and standards (9 C.F.R. 2.40 and 3.8).

B. The respondents did not adequately clean the primary enclosures of excreta in violation of section 3.11(a) of the standards (9 C.F.R. 3.11(a)).

C. The respondents failed to provide a sufficiently long tether for a dog in violation of section 3.6(c) of the standards (9 C.F.R. 3.6(c)).

Conclusions

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts set forth in the Findings of Fact above, the respondent has violated the Act, as well as standards and regulations promulgated under the Act.
3. The following Order is authorized by the Act and warranted under the

circumstances.

Order

1. Respondents, their agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from:

(a) Failing to provide itineraries and other information regarding their business upon request;

(b) Failing to maintain records of the acquisition, disposition, description, and identification of animals, as required.

(c) Failing to establish and maintain programs of disease control and prevention, euthanasia, and adequate veterinary care under the supervision and assistance of a doctor of veterinary medicine;

(d) Failing to develop, document, and follow an appropriate plan to provide dogs with the opportunity for exercise, and to provide such plan to APHIS upon request; and

(e) Failing to provide sufficient space for dogs in primary enclosures, and, when dogs are tethered, to provide tethers of sufficient length.

2. The respondents are jointly and severally assessed a civil penalty of \$15,000, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

3. Respondents' license is suspended for a period of 120 days and continuing thereafter until they demonstrate to the Animal and Plant Health Inspection Service that they are in full compliance with the Act, the regulations and standards issued thereunder, and this order, including payment of the civil penalty imposed herein. When respondents demonstrate to the Animal and Plant Health Inspection Service that they have satisfied this condition, a supplemental order will be issued in this proceeding upon the motion of the Animal and Plant Health Inspection Service, terminating the suspension.

The provisions of this Order shall become effective on the first day after service of this decision on the respondents. Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final January 7, 1998-Editor]

In re: WALLACE ECKLOF, d/b/a PICK OF THE LITTER.
AWA Docket No. 97-0030.
Decision and Order filed September 9, 1997.

Failure to file an answer - Operating as a dealer without obtaining a license - Failure to notify APHIS of change of address - Failure to allow inspection - Cease and desist order - Civil penalty - License disqualification.

Frank Martin, Jr., for Complainant.
Respondent, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the Act and the regulations issued pursuant to the Act (9 C.F.R. § 1.1 *et seq.*).

A copy of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, was served on the respondent Wallace Ecklof on June 25, 1997.¹ Respondent was informed in the letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent Wallace Ecklof has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted as set forth herein by respondent's failure to file an answer, are adopted and set forth herein as Findings of Fact and Conclusions of Law.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

¹The Hearing Clerk attempted to serve a copy of the complaint and the Rules of Practice on the respondent by certified mail but the documents were returned marked unclaimed. Pursuant to section 1.147(c) of the Rules of Practice, the complaint and the Rules of Practice were served on the respondent by regular mail on June 25, 1997.

Findings of Fact and Conclusions of Law

I

1. Wallace Ecklof, hereinafter referred to as respondent, is an individual doing business as Pick of the Litter, whose address is 17789 43rd Street North, Loxahatchee, Florida 33470.

2. The respondent, at all times material herein, was operating as a dealer as defined in the Act and the regulations.

3. From about June 1995, through about December 1995, the respondent willfully violated section 4 of the Act (7 U.S.C. § 2134) and section 2.1 of the regulations (9 C.F.R. § 2.1) by operating as a dealer as defined in the Act and the regulations without having obtained a license. Respondent sold, in commerce, at least 142 dogs for resale for use as pets. The sale of each animal constitutes a separate violation.

4. From about June 1995, through about December 1995, the respondent willfully violated section 4 of the Act (7 U.S.C. § 2134) and section 2.1 of the regulations (9 C.F.R. § 2.1) by operating as a dealer as defined in the Act and the regulations without having obtained a license. Respondent purchased, in commerce, at least 30 dogs for resale for use as pets. The purchase of each animal constitutes a separate violation.

5. On October 31, 1995, the respondent willfully violated section 2.27(a) of the regulations (9 C.F.R. § 2.27(a)), by failing to notify APHIS of a change in address of his business or operation, or of any additional sites, within 10 days of the change.

6. On October 31, 1995, the respondent willfully violated section 16 of the Act (7 U.S.C. § 2146) and section 2.126 of the regulations (9 C.F.R. § 2.126), by failing to allow APHIS employees to conduct a complete inspection of his animal facilities.

7. On December 5, 1995, the respondent willfully violated section 16 of the Act (7 U.S.C. § 2146) and section 2.126 of the regulations (9 C.F.R. § 2.126), by failing to allow APHIS employees to conduct a complete inspection of his animal facilities.

8. On February 6, 1996, the respondent willfully violated section 16 of the Act (7 U.S.C. § 2146) and section 2.126 of the regulations (9 C.F.R. § 2.126), by failing to allow APHIS employees to conduct a complete inspection of his animal facilities.

Conclusions

- 1 The Secretary has jurisdiction in this matter.
2. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from engaging in any activity for which a license is required under the Act and regulations without being licensed as required.

2. Respondent is assessed a civil penalty of \$4,000, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

3. Respondent is disqualified for a period of one year from becoming licensed under the Act and regulations, and continuing thereafter until he has paid the civil penalty assessed against him.

The provisions of this order shall become effective on the first day after this decision becomes final.

Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final January 7, 1998.-Editor]

In re: JAMES DANIEL.

AWA Docket No. 96-0065.

Decision and Order filed February 19, 1998.

Failure to file an an answer - Shipment of dogs which were not at least eight weeks of age - Failure to individually identify dogs - Cease and desist order - Civil penalty - Suspension.

Robert Ertman, for Complainant.

Respondent, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the Act and the regulations issued pursuant to the Act (9 C.F.R. § 1.1 *et seq.*)

A copy of the complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, was duly served on the respondent by the Office of the Hearing Clerk. Respondent was informed in the letter of service that an answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent has failed to file an answer within the time prescribed in the Rules of Practice, and the material facts alleged in the complaint, which are admitted as set forth herein by respondent's failure to file an answer, are adopted and set forth herein as Findings of Fact and Conclusions of Law.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact and Conclusions of Law

1. James Daniel, hereinafter referred to as respondent, is an individual whose address is 2224 Daniel Drive, Joshua, Texas 76058.

2. The respondent, at all times material herein, was licensed and operating as a dealer as defined in the Act and the regulations.

3. Between October 16, 1992 and February 16, 1993, respondent shipped 68 dogs which were not at least eight weeks of age to a retail pet store in Oakham, Massachusetts, in willful violation of section 2.130 of the regulations (9 C.F.R. § 2.130). The shipment of each underage dog constitutes a separate violation.

4. Between January 1992 and April 1993, respondent shipped 1,567 dogs which were not individually identified to a retail store in Oakham, Massachusetts, in willful violation of section 11 of the Act (7 U.S.C. § 2141) and section 2.50 of the regulations (9 C.F.R. § 2.50).

Conclusions

1. The Secretary has jurisdiction in this matter.
2. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent, his agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations and standards issued thereunder, and in particular, shall cease and desist from failing to individually identify dogs, as required, and from shipping dogs under the minimum age.

2. The respondent is assessed a civil penalty of \$7,500, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

3. Respondent's license is suspended for a period of 60 days and continuing thereafter until he demonstrates to the Animal and Plant Health Inspection Service that he is in full compliance with the Act, the regulations and standards issued thereunder, and this order, including payment of the civil penalty. When respondent demonstrates to the Animal and Plant Health Inspection Service that he has satisfied this condition, a supplemental order will be issued in this proceeding upon the motion of the Animal and Plant Health Inspection Service, terminating the suspension.

The provisions of this order shall become effective on the first day after this decision becomes final.

Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final April 1, 1998.-Editor]

In re: DANIELE L. JONES, d/b/a D&J ANIMALS.

AWA Docket No. 97-0041.

Decision and Order filed February 13, 1998.

Failure to file an answer - Operating as a dealer without a license - Cease and desist order - Civil Penalty - Disqualification.

Frank Martin, Jr., for Complainant.

Respondents, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

Preliminary Statement

This proceeding was instituted under the Animal Welfare Act ("Act"), as amended (7 U.S.C. § 2131 *et seq.*), by a Complaint filed by the Administrator, Animal and Plant Health Inspection Service, United States Department of Agriculture, alleging that the respondent willfully violated the Act and the regulations issued thereunder (9 C.F.R. § 1.1 *et seq.*).

Copies of the Complaint and the Rules of Practice governing proceedings under the Act, 7 C.F.R. §§ 1.130-1.151, were served upon respondent by certified mail on November 14, 1997. Respondent was informed in the letter of service that an Answer should be filed pursuant to the Rules of Practice and that failure to answer any allegation in the complaint would constitute an admission of that allegation.

Respondent failed to file an Answer addressing the allegations contained in the complaint within the time prescribed in the Rules of Practice. Therefore, the material facts alleged in the Complaint, which are admitted as set forth herein by respondent's failure to file an Answer pursuant to the Rules of Practice, are adopted as set forth herein as Findings of Fact and Conclusions of Law.

This decision and order, therefore, is issued pursuant to section 1.139 of the Rules of Practice, 7 C.F.R. § 1.139.

Findings of Fact and Conclusions of Law

A. Daniele L. Jones, hereinafter referred to as respondent, is an individual doing business as D&J Animals whose address is 8952 County Bend S Cir., Jacksonville, Florida 32244.

B. The respondent, at all times material hereto, was operating as a dealer as defined in the Act and the regulations.

C. During 1995 and 1996, the respondent willfully violated section 4 of the Act (7 U.S.C. § 2134) and section 2.1 of the regulations (9 C.F.R. § 2.1) by operating as a dealer as defined in the Act and the regulations without having obtained a license. Respondent sold, in commerce, at least 1200 animals for resale for use in research, for use as pets or for exhibition. The sale of each animal constitutes a separate violation.

Conclusions

1. The Secretary has jurisdiction in this matter.
2. By reason of the facts set forth in the Findings of Fact above, the respondent

has violated the Act and regulations promulgated under the Act.

3. The following Order is authorized by the Act and warranted under the circumstances.

Order

1. Respondent, her agents and employees, successors and assigns, directly or through any corporate or other device, shall cease and desist from violating the Act and the regulations issued thereunder, and in particular, shall cease and desist from engaging in any activity for which a license is required under the Act and regulations without being licensed as required.

2. The respondent is assessed a civil penalty of \$3,000, which shall be paid by a certified check or money order made payable to the Treasurer of United States.

3. The respondent is disqualified for a period of one year from becoming licensed under the Act and regulations, and continuing thereafter until she has paid the civil penalty assessed against her. The provisions of this Order shall become effective on the first day after service of this decision on the respondent.

Pursuant to the Rules of Practice, this decision becomes final without further proceedings 35 days after service as provided in section 1.142 and 1.145 of the Rules of Practice, 7 C.F.R. §§ 1.142 and 1.145.

Copies of this decision shall be served upon the parties.

[This Decision and Order became final April 18, 1998.-Editor]

FEDERAL CROP INSURANCE ACT

In re: JEFFREY EDWARDS.

FCIA Docket No. 96-0007.

Decision and Order filed November 25, 1997.

Failure to file an answer - Willfully and intentionally providing false and inaccurate information to FCIC or the insurer - Disqualification.

Kimberly Arrigo, for Complainant.
Respondent, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

Pursuant to section 1.143(b) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.143(b)), the Motion for Summary Judgment filed by the complainant, Federal Crop Insurance Corporation (FCIC), is granted on the grounds that there are no genuine issues of material fact. The respondent, Jeffrey Edwards, willfully and intentionally provided false information to FCIC when he signed crop insurance documents based on an full guarantee when he knew that his father, Jerry Edwards, was still the operator of the farm after he was placed on the nonstandard classification system and should have received a significantly reduced guarantee. The respondent willfully and intentionally provided false information to FCIC when under-reported his production in the 1991 and 1992 crop years. The respondent willfully and intentionally provided false information to FCIC when he reported his share in FSN 1663 as 100 percent when he was renting such acreage for a 25 percent share of the crop.

Therefore, it is found that the respondent has willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the 1990 Act. (7 U.S.C. § 1506(m)).

It is further found that, pursuant to section 506 of the Act (7 U.S.C. § 1506), respondent, and any entity in which he retains substantial beneficial interest after the period of disqualification has commenced, is disqualified from purchasing catastrophic risk protection or receiving noninsured assistance for a period of two years and from receiving any other benefit under the Act for a period of 10 years. The period of disqualification shall be effective 35 days after this decision is served on the respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

If the period of disqualification would commence after the beginning of the

crop year, and the respondent has a crop insurance policy in effect, disqualification will commence at the beginning of the following crop year and remain in effect for the entire period specified in this decision.

[This Decision and Order became final January 6, 1998.-Editor]

In re: WENDELL EUGENE BECKWITH.
FCIA Docket No. 97-0010.
Decision and Order filed January 22, 1998.

Failure to file an answer - Willfully and intentionally providing false and inaccurate information to the FCIC or to the insurer with respect to a plan or policy under the Act - Disqualification.

Donald McAmis, for Complainant.
Respondent, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

Pursuant to section 1.136(c) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136(c)), failure of respondent, Wendell Eugene Beckwith, to file an answer within the time provided is deemed an admission of the allegations contained in the Complaint. Since the allegations in paragraph II of the Complaint are deemed admitted, it is found that the respondent has willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the 1990 Act. (7 U.S.C. § 1506(n)).

It is further found that, pursuant to section 506 of the Act (7 U.S.C. § 1506), respondent, and any entity in which he retains substantial beneficial interest after the period of disqualification has commenced, is disqualified from purchasing catastrophic risk protection or receiving noninsured assistance for a period of two years and from receiving any other benefit under the Act for a period of 10 years. The period of disqualification shall be effective 35 days after this decision is served on the respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

If the period of disqualification would commence after the beginning of the crop year, and the respondent has a crop insurance policy in effect, disqualification will commence at the beginning of the following crop year and remain in effect for the entire period specified in this decision.

[This Decision and Order became final March 2, 1998.-Editor]

In re: EDDIE J. ROBINSON.

FCIA Docket No. 97-0017.

Decision and Order filed January 22, 1998.

Failure to file an answer - Willfully and intentionally providing false or inaccurate information to FCIC or the insurer - Disqualification.

Donald McAmis, for Complainant.

Respondent, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

Pursuant to section 1.136(c) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136 (c)), failure of respondent Eddie J. Robinson, to file an answer within the time provided is deemed an admission of the allegations contained in the Complaint. Since the allegations in paragraph II of the Complaint are deemed admitted, it is found that the respondent has willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the 1990 Act. (7 U.S.C. § 1506(n)).

It is further found that, pursuant to section 506 of the Act (7 U.S.C. § 1506), respondent, and any entity in which he retains substantial beneficial interest after the period of disqualification has commenced, is disqualified from purchasing catastrophic risk protection or receiving noninsured assistance for a period of two years and from receiving any other benefit under the Act for a period of 10 years. The period of disqualification shall be effective 35 days after this decision is served on the respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

If the period of disqualification would commence after the beginning of the crop year, and the respondent has a crop insurance policy in effect, disqualification will commence at the beginning of the following crop year and remain in effect for the entire period specified in this decision.

[This Decision and Order became final March 3, 1998.-Editor]

In re: LUTHER ALLEN WEST.

FCIA Docket No. 97-0014.

Decision and Order filed January 22, 1998.

Failure to file an answer - Willfully and intentionally providing false or inaccurate information to

FCIC or to the insurer - Disqualification.

Donald McAmis., for Complainant.
Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

Pursuant to section 1.136(c) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136 (c)), failure of respondent Luther Allen West, to file an answer within the time provided is deemed an admission of the allegations contained in the Complaint. Since the allegations in paragraph II of the Complaint are deemed admitted, it is found that the respondent has willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the 1990 Act. (7 U.S.C. § 1506(n)).

It is further found that, pursuant to section 506 of the Act (7 U.S.C. § 1506), respondent, and any entity in which he retains substantial beneficial interest after the period of disqualification has commenced, is disqualified from purchasing catastrophic risk protection or receiving noninsured assistance for a period of two years and from receiving any other benefit under the Act for a period of 10 years. The period of disqualification shall be effective 35 days after this decision is served on the respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

If the period of disqualification would commence after the beginning of the crop year, and the respondent has a crop insurance policy in effect, disqualification will commence at the beginning of the following crop year and remain in effect for the entire period specified in this decision.

[This Decision and Order became final March 5, 1998.-Editor]

In re: THOMAS JOE AGEE

FCIA Docket No. 98-0002.

Decision and Order filed February 19, 1998.

Failure to file an answer - Willfully and intentionally providing false and inaccurate information to FCIC or the insurer - Disqualification.

Donald McAmis, for Complainant.
Respondent, Pro se.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

Pursuant to section 1.136(c) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136 (c)), failure of respondent, Thomas Joe Agee, to file an answer within the time provided is deemed an admission of the allegations contained in the Complaint. Since the allegations in paragraph II of the Complaint are deemed admitted, it is found that the respondent has willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the 1990 Act. (7 U.S.C. § 1506(n)).

It is further found that, pursuant to section 506 of the Act (7 U.S.C. § 1506), respondent, and any entity in which he retains substantial beneficial interest after the period of disqualification has commenced, is disqualified from purchasing catastrophic risk protection for a period of two years and from receiving any other benefit under the Act for a period of 10 years. The period of disqualification shall be effective 35 days after this decision is served on the respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

If the period of disqualification would commence after the beginning of the crop year, and the respondent has a crop insurance policy in effect, disqualification will commence at the beginning of the following crop year and remain in effect for the entire period specified in this decision.

[This Decision and Order became final March 30, 1998.-Editor]

In re: M. MICHAEL ROGERS.

FCIA Docket No. 98-0004.

Decision and Order filed February 19, 1998.

Failure to file an answer - Willfully and intentionally providing false and inaccurate information to FCIC or the insurer - Disqualification.

Donald McAmis, for Complainant.

Respondent, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

Pursuant to section 1.136(c) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136(c)), failure of respondent, M. Michael Rogers, to file an answer within the time provided is deemed an admission of the allegations contained in the Complaint. Since the allegations in paragraph II of the Complaint are deemed admitted, it is found that the respondent has willfully

and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the 1990 Act. (7 U.S.C. § 1506(n)).

It is further found that, pursuant to section 506 of the Act (7 U.S.C. § 1506), respondent, and any entity in which he retains substantial beneficial interest after the period of disqualification has commenced, is disqualified from purchasing catastrophic risk protection for a period of two years and from receiving any other benefit under the Act for a period of 10 years. The period of disqualification shall be effective 35 days after this decision is served on the respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

If the period of disqualification would commence after the beginning of the crop year, and the respondent has a crop insurance policy in effect, disqualification will commence at the beginning of the following crop year and remain in effect for the entire period specified in this decision.

[This Decision and Order became final April 2, 1998.-Editor]

In re: DIANE BECKWITH.
FCIA Docket No. 97-0011.
Decision and Order filed March 6, 1998.

Failure to file an answer - Willfully and intentionally providing false and inaccurate information to FCIC or insurer - Disqualification.

Donald McAmis, for Complainant.
Respondent, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

Pursuant to section 1.136(c) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary, the failure of respondent Diane Beckwith, to file an answer within the time provided is deemed an admission of the allegations contained in the Complaint. Since the allegations in paragraph II of the Complaint are deemed admitted, it is found that the respondent has willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the 1990 Act. (7 U.S.C. § 1506(n)).

It is further found that, pursuant to section 506 of the Act (7 U.S.C. § 1506), and upon consideration of the gravity of the violation, respondent, and any entity in which she retains substantial beneficial interest after the period of disqualification has commenced, is disqualified from purchasing catastrophic risk

protection or receiving noninsured assistance for a period of two years and from receiving any other benefit under the Act for a period of 10 years. The period of disqualification shall be effective 35 days after this decision is served on the respondent unless there is an appeal to the Judicial Officer pursuant to § 1.145.

If the period of disqualification would commence after the beginning of the crop year, and the respondent has a crop insurance policy in effect, disqualification will commence at the beginning of the following crop year and remain in effect for the entire period specified in this decision.

[This Decision and Order became final April 15, 1998.-Editor]

In re: LEONARD HOFFMAN.

FCIA Docket No. 97-0001.

Decision and Order filed March 3, 1998.

Failure to file an answer - Willfully and intentionally providing false or inaccurate information - Disqualification.

Donald McAmis, for Complainant.

Respondent, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

Pursuant to section 1.136(c) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136(c)), the failure of respondent, Leonard Hoffman, to file an answer within the time provided is deemed an admission of the allegations contained in the Complaint. Since the allegations in paragraph II of the Complaint are deemed admitted, it is found that the respondent has willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the 1990 Act. (7 U.S.C. § 1506(n)).

It is further found that upon consideration of the gravity of the violations which respondent is deemed to have admitted, pursuant to section 506 of the Act (7 U.S.C. § 1506), respondent, and any entity in which he retains substantial beneficial interest after the period of disqualification has commenced, is hereby disqualified from purchasing catastrophic risk protection for a period of two years and from receiving any other benefit under the Act for a period of 10 years. The period of disqualification shall be effective 35 days after this decision is served on the respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

If the period of disqualification would commence after the beginning of the crop year, and the respondent has a crop insurance policy in effect, disqualification shall commence at the beginning of the following crop year and remain in effect for the entire period specified in this decision.

[This Decision and Order became final April 13, 1998.-Editor]

In re: LARRY D. BECKWITH.
FCIA Docket No. 97-0013.
Decision and Order filed March 6, 1998.

Failure to file an answer - Willfully and intentionally providing false and inaccurate information to the FCIC or insurer - Disqualification.

Donald McAmis, for Complainant.
Respondent, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

Pursuant to section 1.136(c) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. §§ 1.136(c)), the failure of respondent Larry D. Beckwith, to file an answer within the time provided is deemed an admission of the allegations contained in the Complaint. Since the allegations in paragraph II of the Complaint are deemed admitted, it is found that the respondent has willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the 1990 Act. (7 U.S.C. § 1506(n)).

It is further found that, pursuant to section 506 of the Act (7 U.S.C. § 1506), and upon consideration of the gravity of the violation, respondent, and any entity in which he retains substantial beneficial interest after the period of disqualification has commenced, is disqualified from purchasing catastrophic risk protection or receiving noninsured assistance for a period of two years and from receiving any other benefit under the Act for a period of 10 years. The period of disqualification shall be effective 35 days after this decision is served on the respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

If the period of disqualification would commence after the beginning of the crop year, and the respondent has a crop insurance policy in effect, disqualification will commence at the beginning of the following crop year and remain in effect for the entire period specified in this decision.

[This Decision and Order became final April 16, 1998.-Editor]

In re: EUGENE BECKWITH.
FCIA Docket No. 97-0012.
Decision and Order filed March 6, 1998.

Failure to file an answer – Willfully and intentionally providing false inaccurate information - Disqualification.

Donald McAmis, for Complainant.
Respondent, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

Pursuant to section 1.136(c) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136(c)), the failure of respondent Eugene Beckwith, to file an answer within the time provided is deemed an admission of the allegations contained in the Complaint. Since the allegations in paragraph II of the Complaint are deemed admitted, it is found that the respondent has willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the 1990 Act. (7 U.S.C. § 1506(n)).

It is further found that, pursuant to section 506 of the Act (7 U.S.C. § 1506), and upon consideration of the gravity of the violation, respondent, and any entity in which he retains substantial beneficial interest after the period of disqualification has commenced, is disqualified from purchasing catastrophic risk protection or receiving noninsured assistance for a period of two years and from receiving any other benefit under the Act for a period of 10 years. The period of disqualification shall be effective 35 days after this decision is served on the respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145.

If the period of disqualification would commence after the beginning of the crop year, and the respondent has a crop insurance policy in effect, disqualification will commence at the beginning of the following crop year and remain in effect for the entire period specified in this decision.

[This Decision and Order became final May 4, 1998.-Editor]

In re: JAMES E. ARCENEUX, JR.
FCIA Docket No. 97-0004.
Decision filed April 9, 1998.

Donald McAmis, for Complainant.

Respondent, Pro se.

Order issued by James W. Hunt, Administrative Law Judge.

Summary judgment - Willfully and intentionally providing false or inaccurate information - Disqualification.

This matter having been brought upon motion of the Complainant, seeking summary judgment on a complaint for the disqualification of respondent, James E. Arceneaux, Jr., from purchasing catastrophic risk protection for a period of two years, and any other benefit under the Federal Crop Insurance Act, as amended (7 U.S.C § 1501 *et seq.* 1990), for a period of ten years; and in consideration of the motion, and any opposition thereto, and for good cause appearing, complainant's motion is hereby granted; and, it is found that the respondent has willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the 1990 Act (7 U.S.C. § 1506(m)).

Accordingly, pursuant to section 506 of the Act (7 U.S.C. § 1506), and subpart R of the Regulations (7 C.F.R. §§ 400, 454), it is ORDERED that the respondent be and is thereby disqualified from purchasing catastrophic risk protection for a period of two years, and from receiving any other benefit under the Federal Crop Insurance Act for a period of ten years.

It is further ORDERED that any entity in which the respondent retains a substantial beneficial interest after the period of disqualification has commenced, is disqualified from purchasing catastrophic risk protection or receiving noninsured assistance for a period to two years and from receiving any other benefit under the Act for a period of 10 years. The period of disqualification shall be effective 35 days after this decision is served on the respondent unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.145).

If the period of disqualification would commence after the beginning of the crop year, and the respondent has a crop insurance policy in effect, disqualification will commence at the beginning of the following crop year, and remain in effect for the entire period specified in this decision.

[This Decision and Order became final May 19, 1998.-Editor]

In re: JAMES E. ARCENEUX, JR.

FCIA Docket No. 97-0004.

Order Denying Motion to Vacate Decision filed April 28, 1998.

Donald McAmis, for Complainant.

Respondent, Pro se.

Order issued by James W. Hunt, Administrative Law Judge.

Having considered the matter, Respondent's motion to vacate decision (entitled motion for rehearing) is denied.

In re: JEMMY RICHARDSON.

FCIA Docket No. 97-0006.

Decision and Order filed April 6, 1998.

Failure to file an answer - Willfully and intentionally providing false or inaccurate information - Disqualification.

Donald McAmis, for Complainant.

Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

Pursuant to section 1.136(c) of the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.136(c)), failure of the respondent, Jemmy Richardson, to file an answer within the time provided is deemed an admission of the allegations contained in the Complaint. Because the allegations in paragraph II of the Complaint are deemed admitted, it is found that the respondent has willfully and intentionally provided false and inaccurate information to the Federal Crop Insurance Corporation or to the insurer with respect to an insurance plan or policy under the 1990 Act (7 U.S.C. section 1506(m)).

It is further found that, pursuant to section 506 of the Act (7 U.S.C. section 1506), respondent, and any entity in which he retains substantial beneficial interest after the period of disqualification has commenced, is disqualified from purchasing catastrophic risk protection or receiving noninsured assistance for a period of two years and from receiving any other benefit under the Act for a period of 10 years. The period of disqualification shall be effective 35 days after this decision is served on the respondent unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145 of the Rules of Practice Governing Formal

Adjudicatory Administrative Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.145).

If the period of disqualification would commence after the beginning of the crop year, and the respondent has a crop insurance policy in effect, disqualification will commence at the beginning of the following crop year, and remain in effect for the entire period specified in this decision.

[This Decision and Order became final May 19, 1998.-Editor]

PLANT QUARANTINE ACT

In re: JONES COSMAS ONNENU.
P.Q. Docket No. 96-0025.
Decision and Order filed October 9, 1997.

Admission of material allegations - Importation of eggplants from Nigeria - Civil penalty.

Darlene M. Bolinger, for Complainant.
Respondent, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty as authorized by section 3 of the Act of February 2, 1903, as amended (21 U.S.C. § 122), section 108 of the Federal Plant Pest Act, as amended (7 U.S.C. § 150gg), and section 10 of the Plant Quarantine Act, as amended (7 U.S.C. § 163), for a violation of the regulation issued under the Act that governs preventing the dissemination of plant pests into or through the United States (7 C.F.R. § 330.101 *et. seq.*), hereinafter referred to as the regulations.

This proceeding was instituted by a complaint filed on March 26, 1996, by Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The complaint alleged that respondent violated 7 C.F.R. § 319.56 of the regulation (7 C.F.R. § 319.56), in that 20 fresh eggplants were imported from Nigeria to Detroit, Michigan.

The answer filed by the respondent contained an admission of all jurisdictional and material allegations of fact contained in the complaint. In accordance with section 1.139 of the Rules of Practice (7 C.F.R. § 1.139), such admission shall constitute a waiver of hearing.

The Decision and Order, therefore is issued pursuant to section 1.139 and 1.141 of the Rules of Practice applicable to this proceeding (7 C.F.R. §§ 1.139 and 1.141).

Accordingly, the material facts alleged in the complaint, which Respondent is deemed to have admitted, are adopted and set forth herein as the findings of fact.

Findings of Fact

1. Jones Cosmas Onnenu is an individual whose mailing address is 16140 Fairfield, Detroit, Michigan 48221.
2. On or about September 19, 1995, at Detroit, Michigan, respondent violated 7 C.F.R. § 319.56 of the regulations (7 C.F.R. § 319.56) in that 20 fresh eggplants were imported from Nigeria to Detroit, Michigan.

Conclusion

By reason of the Findings of Fact set forth above, Respondent has violated the Act and Part 319, Subpart 319.56 of regulations promulgated thereunder (7 C.F.R. Part 319, Subpart 319.56). Therefore, the following order is issued. Therefore, the following Order is issued.

Order

Respondent Jones Cosmas Onnenu, is hereby assessed a civil penalty of two hundred fifty dollars (\$250.00). The civil penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

within thirty (30) days from the effective date of this order. Respondent shall indicate on the check or money order that payment is made in reference to P. Q. Docket No. 96-0025.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon Respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final January 5, 1998.-Editor]

In re: JOSE JAIME MARTINEZ.
P.Q. Docket No. 97-0014.
Decision and Order filed December 2, 1997.

Failure to file an answer - Importation of hog plums from El Salvador - Civil penalty.

Rick Herndon, for Complainant.
Respondent, Pro se.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the movement of fruits and vegetables (7 C.F.R. § 319.56 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.* and 380.1 *et seq.*

This proceeding was instituted under the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj), the Plant Quarantine Act, as amended (7 U.S.C. §§ 151-154, 156-165 and 167)(Acts), and the regulations promulgated under the Acts, by a complaint filed on May 6, 1997, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the admission of the allegations in the complaint constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Jose Jaime Martinez is an individual whose mailing address is 1517 Culley Street, Las Vegas, Nevada 89110.

2. On or about May 10, 1996, at Houston, Texas, respondent imported 35 hog plums from El Salvador into the United States, in violation of Section 7 C.F.R. § 319.56 (b) and (c) because importation of such fruit from El Salvador is prohibited.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Acts and the regulations issued under the Acts (7 C.F.R. § 319.56 *et seq.*). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of seven hundred and fifty

dollars (\$750.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to P.Q. Docket No. 97-0014.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final January 15, 1998.-Editor]

In re: MARIA ROSARIO HERNANDEZ.
P.Q. Docket No. 97-0017.
Decision and Order filed December 2, 1997.

Failure to file an answer - Importation of chorizo sausage from Mexico - Civil penalty.

Jane Settle, for Complainant.
Respondent, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty, as authorized by section 3 of the Act of February 2, 1903, as amended (21 U.S.C. § 122), for a violation of the regulations governing the importation of meat products from Mexico (9 C.F.R. § 94 *et seq.*) hereinafter referred to as the regulations, in accordance with the Rules of Practice in 9 C.F.R. § 70.1 *et seq.*, and 7 C.F.R. § 1.130 *et seq.*

This proceeding was instituted under the Act of February 2, 1903, as amended (21 U.S.C. § 111) and regulations promulgated thereunder (9 C.F.R. § 94 *et seq.*), by a complaint filed on July 3, 1997, by the Acting Administrator of the Animal

and Plant Health Inspection Service, United States Department of Agriculture. This complaint alleges that on or about April 23, 1995, respondent imported two (2) pounds of chorizo sausage from Mexico into the United States in violation of 9 C.F.R. § 94.9, because such importation is prohibited.

The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the failure to file a timely answer constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision and Order as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Maria Rosario Hernandez is an individual with a mailing address of 14220 Franciequito Ave., #418, Baldwin Park, California 91706.

2. On or about April 23, 1995, respondent imported two (2) pounds of chorizo sausage from Mexico into the United States in violation of 9 C.F.R. § 94.9, because such importation is prohibited.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Acts and the regulations issued under the Acts (9 C.F.R. § 94.9). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of three hundred and seventy-five dollars (\$375.00)¹. This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

¹The respondent has failed to file an answer within the prescribed time, and, under the Rules of Practice applicable to this proceeding, the Department is not required to hold a hearing. Therefore, the civil penalty requested is reduced by one-half in accordance with the Judicial Officer's Decisions in *In re Shulamis Kaplinsky*, 47 Agric. Dec. 613 (1988) and *In re: Richard Duran Lopez*, 44 Agric. Dec. 2201 (1985).

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to P.Q. Docket No. 97-0017.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final February 19, 1998.-Editor]

In re: VERONICA F. REYNOLDS.
P.Q. Docket No. 97-0021.
Decision and Order filed February 19, 1998.

Failure to file an answer - Importation of sugarcane from Jamaica without a permit - Importation of yams and thyme from Jamaica without a permit - Civil penalty.

Jeffrey Kirmmsse, for Complainant.
Respondent, Pro se.

Decision and Order issued by Edwin S. Bernstein, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the movement of fruits and vegetables (7 C.F.R. § 319.56 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.* and 380.1 *et seq.*

This proceeding was instituted under the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj), the Plant Quarantine Act, as amended (7 U.S.C. §§ 151-154, 156-165 and 167)(Acts), and the regulations promulgated under the Acts, by a complaint filed on September 12, 1997, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the

complaint. Further, the admission of the allegations in the complaint constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139).

Findings of Fact

1. Veronica F. Reynolds is an individual whose mailing address is 1035 Clarkson Avenue, Brooklyn, New York 11212.

2. On or about November 9, 1994, respondent imported sugarcane (Saccharum spp.) from Jamaica into the United States in violation of 7 C.F.R. § 319.15(a) because the importation of sugarcane without a permit is prohibited.

3. On or about November 9, 1994, respondent imported yams (Dioscorea spp.), and thyme (Thymus spp.) from Jamaica into the United States in violation of 7 C.F.R. § 319.56-2(e) because the importation of yams and thyme without a permit is prohibited.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Acts and the regulations issued under the Acts (7 C.F.R. § 319.56 *et seq.*). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of one thousand dollars (\$1,000). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to P.Q. Docket No. 97-0021.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145).

[This Decision and Order became final March 31, 1998.-Editor]

In re: JOSE MERIDO RAMIREZ ARIAS.

P.Q. Docket No. 97-0009.

Decision and Order filed March 5, 1998.

Failure to file an answer - Importation of mangoes - Civil penalty.

James Booth, for Complainant.
Respondent, Pro se.

Decision and Order issued by Victor W. Palmer, Chief Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the importation of fresh mangoes from Mexico to the United States (7 C.F.R. § 319.56(c) *et seq.*) hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.* and 380.1 *et seq.*

This proceeding was instituted under the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj), the Plant Quarantine Act, as amended (7 U.S.C. § 151-167)(Acts), and the regulations promulgated under the Acts, by a Complaint filed on March 6, 1997, by the Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. This Complaint alleges that on or about April 10, 1996, respondent imported 25 fresh mangoes from Mexico into the United States at Los Angeles International Airport, in violation of 7 C.F.R. § 319.56(c).

The respondent signed for receipt of the filed Complaint on March 14, 1997. However, respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a) and has not filed an answer as of the date of the filing of the motion for this Order. Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the Complaint. Further, the failure to file an answer constitutes a waiver of hearing (7 C.F.R. § 1.139). Accordingly, the material allegations in the Complaint are adopted and set forth in this Default Decision as the Findings of Fact, and this

Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.139).

Findings of Fact

1. Jose Merido Ramirez Arias, herein referred to as the respondent, is an individual whose mailing address is 1933 Pennsylvania Ave., Los Angeles, CA 90033.

2. On or about April 10, 1996, respondent imported 25 fresh mangoes from Mexico into the United States at Los Angeles International Airport, in violation of 7 C.F.R. § 319.56(c).

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Acts and the regulations issued under the Acts (7 C.F.R. § 319.56(c) *et seq.*). Therefore, the following Order is issued.

Order

Respondent, Jose Merido Ramirez Arias, is hereby assessed a civil penalty of five hundred dollars (\$500.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate on the certified check or money order that payment is in reference to P.Q. Docket No. 97-0009.

This Order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to 7 C.F.R. § 1.145 of the Rules of Practice.

[This Decision and Order became final April 24, 1998.-Editor]

**In re: DONALD REID.
P.Q. Docket No. 97-0022.
Decision and Order filed February 27, 1998.**

Failure to file an answer - Importation of mangoes and sasumbas without a permit - Civil penalty.

Jeffrey Kirmsse, for Complainant.
Respondent, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the movement of fruits and vegetables (7 C.F.R. § 319.56 *et seq.*), hereinafter referred to as the regulations, in accordance with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.* and 380.1 *et seq.*

This proceeding was instituted under the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj), the Plant Quarantine Act, as amended (7 U.S.C. §§ 151-154, 156-165 and 167)(Acts), and the regulations promulgated under the Acts, by a complaint filed on September 12, 1997, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. § 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the admission of the allegations in the complaint constitutes a waiver of hearing. (7 C.F.R. § 1.139). Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.139.)

Findings of Fact

1. Donald Reid is an individual whose mailing address is 566 Parkside Avenue, Brooklyn, New York 11336.

2. On or about July 12, 1995, respondent imported mangoes and sasumbas from Jamaica into the United States in violation of 7 C.F.R. § 319.56-3 because the respondent did not apply for and receive an import permit, as required.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated

the Acts and the regulations issued under the Acts (7 C.F.R. § 319.56 *et seq.*). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of five hundred dollars (\$500). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to P.Q. Docket No. 97-0022.

This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145.)

[This Decision and Order became final May 4, 1998.-Editor]

In re: FRANCISCO J. GAMBOA.

P.Q. Docket No. 97-0020.

Decision and Order filed February 27, 1998.

Failure to file an answer - Importation of avocados without a permit - Civil penalty.

Jeffrey Kirmsse, for Complainant.

Respondent, Pro se.

Decision and Order issued by James W. Hunt, Administrative Law Judge.

This is an administrative proceeding for the assessment of a civil penalty for a violation of the regulations governing the movement of fruits and vegetables (7 C.F.R. § 319.56 *et seq.*), hereinafter referred to as the regulations, in accordance

with the Rules of Practice in 7 C.F.R. §§ 1.130 *et seq.* and 380.1 *et seq.*

This proceeding was instituted under the Federal Plant Pest Act, as amended (7 U.S.C. §§ 150aa-150jj), the Plant Quarantine Act, as amended (7 U.S.C. §§ 151-154, 156-165 and 167)(Acts), and the regulations promulgated under the Acts, by a complaint filed on September 12, 1997, by the Acting Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture. The respondent failed to file an answer within the time prescribed in 7 C.F.R. § 1.136(a). Section 1.136(c) of the Rules of Practice (7 C.F.R. § 1.136(c)) provides that the failure to file an answer within the time provided under 7 C.F.R. 1.136(a) shall be deemed an admission of the allegations in the complaint. Further, the admission of the allegations in the complaint constitutes a waiver of hearing. (7 C.F.R. § 1.139.) Accordingly, the material allegations in the complaint are adopted and set forth in this Default Decision as the Findings of Fact, and this Decision is issued pursuant to section 1.139 of the Rules of Practice applicable to this proceeding. (7 C.F.R. 1.139).

Findings of Fact

1. Francisco J. Gamboa is an individual whose mailing address is 11845 Clara Barton, El Paso, Texas 79936.

2. On or about May 27, 1995, at El Paso, Texas, respondent imported avocados into the United States from Mexico, in violation of Section 7 C.F.R. § 319.56-4 because importation of avocados without a permit is prohibited.

Conclusion

By reason of the Findings of Fact set forth above, the respondent has violated the Acts and the regulations issued under the Acts (7 C.F.R. § 319.56 *et seq.*). Therefore, the following Order is issued.

Order

The respondent is hereby assessed a civil penalty of seven hundred fifty dollars (\$750.00). This penalty shall be payable to the "Treasurer of the United States" by certified check or money order, and shall be forwarded within thirty (30) days from the effective date of this Order to:

United States Department of Agriculture
APHIS Field Servicing Office
Accounting Section
P.O. Box 3334
Minneapolis, Minnesota 55403

Respondent shall indicate that payment is in reference to P.Q. Docket No. 97-0020. This order shall have the same force and effect as if entered after a full hearing and shall be final and effective thirty five (35) days after service of this Default Decision and Order upon respondent, unless there is an appeal to the Judicial Officer pursuant to section 1.145 of the Rules of Practice applicable to this proceeding. (7 C.F.R. § 1.145.)

[This Decision and Order became final May 4, 1998.-Editor]
